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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/782,353

Applicant(s)

DANIELS, MARTIN

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

1. Applicant's election of Group I, claims 1-8, in Paper No. 5, and cancellation of the non-elected claims 9-11, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant's addition of claims 12-15 is acknowledged and appear similar enough to claims 1-8 to be included in the following examination. Therefore, claims 1-8 and 12-15 are pending in the instant application.

### ***Specification***

2. The abstract of the disclosure is objected to because the reference characters do not match the ones used in the specification, for example, the sign "38" is used for the bushings yet here in the abstract it is used for one of the cutters. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 and 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the use of the term "second" with expressions "a second stud reception member" and "second handle member" is confusing, in that, it implies that there is a first stud reception member and/or a first handle member.

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In claim 2, there is no positive antecedent basis for "said handle".

In claim 6, the phrase "... said cutting assembly comprised a serpentine..." is confusing, in that, it is awkwardly worded. It would appear to be better phrased like "... said cutting assembly comprising a serpentine...".

In claim 12, the phrase "... having a first relatively projecting portion and a second relatively thick portion" is confusing, in that, it is not clear as to what the first and second portions are related to. Moreover, it is not clear what "thick" encompasses. The phrase "a pair of substantially identical ... and to said handle, effective to move ..." is confusing, in that, it is awkwardly worded. The phrase following the comma does not serve to further describe the handle but rather the severing members. Better language would be "a pair of substantially identical ... and to said handle, said handle effective to move ...".

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bushaw, U.S. Patent 1,850,314.

Bushaw discloses the same invention as claimed including: a first support member (upright 4); a workpiece reception member (39/40/41) perpendicularly attached to the first support member (see Figures 1 and 2); a handle member (20) attached to

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the first support member (see Figures 1 and 2) and includes a pair of identical severing members (each cutting edge of star-knife 26 or 26 and 30).

As to claims 2 and 6, the handle of Bushaw is curved and therefore is serpentine shaped.

As to claims 3 and 8, the reception member is a telescoping member (39/41, see Figure 2).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.

7. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Mendenhall, U.S. Patent 634,304.

Mendenhall discloses the same invention as claimed including: a first support member (A or B'); a workpiece reception member (L) perpendicularly attached to the first support member (directly to A or indirectly to B'); a handle member (G and F) attached to the first support member (directly to B' or indirectly to A) and includes a pair of identical severing members (C).

As to claims 2 and 6, the handle of Bushaw is curved and therefore is serpentine shaped.

As to claims 3 and 8, the reception member is a telescoping member (see Figure 1 where L is adjustable).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.

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8. Claims 1, and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Maillez, U.S. Patent 4,625,607.

Maillez discloses the same invention as claimed including: a first support member (7); a workpiece reception member (11) perpendicularly attached to the first support member (see Figures 1 and 2); a handle member (26) attached to the first support member (16) and includes a pair of identical severing members (18).

As to claim 4, it should be noted that in apparatus claims the workpiece does not further limit the apparatus of claim 1.

9. Claims 12 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bushaw, U.S. Patent 1,850,314, and Miller, U.S. Patent 396,339.

Bushaw discloses the same invention as claimed including: a workpiece reception portion (39-41) having a certain shape capable of receiving and supporting a metal stud; a support member (1-4,24,31,32) having a first relatively projecting portion (1) and a second relatively thick portion (24,31,4), wherein the reception portion is mounted upon the second portion; a serpentine shaped handle (handle 20 is curved) which is pivotally coupled to the second portion; a pair of substantially identical severing members (each cutting edge of star cutter 26 or 26 and 30, see column 2, line 2, where it states that the cutter 30 is attached as shown in Miller) which are pivotally couple to the second portion and capable of moving from an open position to a closed position upon movement of the handle toward and away from the support member.

As claim 14, the reception portion is orthogonal to the longitudinal axis of the reception portion.

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As to claim 15, the pair severing members having at least two sharp edges as shown in Figure 1.

As to the phrases directed toward the specific workpiece, for example, "... which is similar to said metal stud, effective to receive and support said metal stud", they do not further define the invention as they are directed to a specific workpiece.

10. Claims 12-13 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mendenhall, U.S. Patent 634,304.

Mendenhall discloses the same invention as claimed including: a workpiece reception portion (A/J or L) having a certain shape capable of receiving and supporting a metal stud; a support member (A and B' or B') having a first relatively projecting portion (A or B') and a second relatively thick portion (B' or O), wherein the reception portion is mounted upon the second portion; a serpentine shaped handle (F/G) which is pivotally coupled to the second portion; a pair of substantially identical severing members (C) that are pivotally couple to the second portion and capable of moving from an open position to a closed position upon movement of the handle toward and away from the support member.

As to the phrases directed toward the specific workpiece, for example, "... which is similar to said metal stud, effective to receive and support said metal stud", they do not further define the invention as they are directed to a specific workpiece.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bushaw, U.S. Patent 1,850,314, and Miller, U.S. Patent 396,339.

Bushaw and Miller Discloses the invention substantially as claimed except for: the pair of feet for supporting the workpiece support; however, the examiner takes official notice that it is old and well known in the art to use feet in conjunction with workpiece supports for the purpose of supporting a workpiece support on a uneven ground or to provide stability during a cutting operation. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use feet with the workpiece support of Bushaw and Miller in order to provide stability to the device during a cutting operation.

### ***Conclusion***

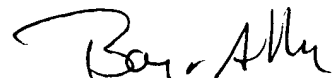
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday thru Thursday between 7:30am and 6:00pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

  
**Boyer D. Ashley**  
**Primary Examiner**  
**Art Unit 3724**

bda  
November 19, 2002